

WISHA REGIONAL DIRECTIVE

Department of Labor and Industries

Division of Occupational Safety and Health

1.18 Employers Exposed To Hazards

Date Issued: July 7, 2006

I. Background

RCW 49.17.060 requires "each employer" to "comply with the rules, regulations, and orders" promulgated under Chapter 49.17 RCW, the Washington Industrial Safety and Health Act (WISHA). Because of this broad requirement, the department has at times issued citations where the only documented exposure was to the employer rather than to his or her employees. While the theory behind these citations has been successfully litigated both on the state level and by the federal Occupational Safety and Health Administration (OSHA), this WISHA Regional Directive (WRD) addresses the appropriate application of this legal doctrine from a policy standpoint.

II. Scope and Application

This WRD, which will remain in effect indefinitely, provides policy guidance to regional DOSH staff in what the department considers to be the appropriate use of this "exposed employer" analysis (this WRD does not apply to asbestos citations issued pursuant to Title 49.26 asbestos law to the extent those citations do not rely upon an employer-employee relationship for their validity). This WRD incorporates the substance of WRD 1.18, issued December 30, 1996, which it hereby rescinds.

III. Operations Protocols

A. *Should employers normally be cited for hazards to which only they are exposed?*

Subject to the exceptions below, employers shall not normally be issued citations for hazards to which only the employer himself or herself is exposed. In such circumstances, the compliance safety and health officer (CSHO) may choose to include a message on the citation and notice pointing out the exposure and the fact that such exposure represents a violation of WISHA.

B. What are the exceptional situations when compliance staff may cite employers for such exposure?

1. A CSHO may choose to issue a citation based on employer exposure if he or she determines that the employer's conduct represents a clear potential hazard to employees (for example, an employer is working in an un-shored trench with employees nearby who would be likely to attempt a rescue if the trench collapsed; or an employer is working within a confined space without proper protection with employees nearby who would be likely to attempt a rescue if the employer were somehow overcome by a hazardous atmosphere).
2. Employers who are themselves covered by industrial insurance are treated as both employers and employees for WISHA purposes (RCW 49.17.020(3)) and must be issued citations as appropriate based on hazards to which they are exposed.

Approved: _____
Stephen M. Cant, CIH, Assistant Director
Department of Labor and Industries
Division of Occupational Safety and Health